1950

File No. S. Bijapur 1

Examined

Legal DEPARTMENT

A BRANCH

Subject:— Suit Bijapur

Civil Suit No. 2 of 1949

Peermahomed Wd. Dastagirsab - Plff

Vs.

(1) Miyasaheb Wd. Hasimsaheb Walikar
(2) The Province of Bombay } - Def

T 18

S. Bijapur 1 | 1950

File No.

Legal Department File No. 5: Bij: 1/50.

Sr. No.	R.I./O.No.	Subject	Pages.

Suits Bijapur.

C.S.No. 2 of 1949.

Peermahomed wd. Dastagirsab.

v/s. pltff.

1) Miyasaheb wd. Husisaheb Walikar.

2) The Bouince of B'bay.

defts.

The Shet Saheb lands, ~~together~~ described in the plaint, together with the right of service of Walikar of village constitute a watan to which the pltff. is entitled and for possession of the suit lands.

1-36.

T. 139

Information as required by Rule 119 (c) of Law Officers Rules.

The facts of the case are as under:-

One Dastagirsaheb Hajisaheb was Shet Sanadi of Nidoni a village in Bijapur Taluka. S.No. 91, 92, 93, - 298, and 412 of Nidoni were assigned for Sanadi service to the Officaitor. He died on 13-4-1931 leaving behind him his widow, and the plaintiff who was then a minor of 4 years. There was no other male member in the family fit to serve as Walikar except the defendant No. 1 . The deceased widow made an agreement with the defendant No 1 that he should relinquish the Sanadi lands as well as Service on his son's attaining majority and on his attaining majority gave the right of Walikarki service and the possession of the lands assigned for the remuneration of the Walikar to the defendant No 1. Accordingly the Sanadi lands and service were entered in the name of the defendant No 1. From that date the defendant is performing his duty smoothly enjoying the lands.

The record shows however that the family arrangement between plaintiff and defendant No 1 was not acceptable to the village people as the defendant No 1 was not a Walikar by birth and was unconditional.

The plaintiff on attaining majority approached the Prant Officer to recognised him as entitled to hold the Office of Shet Sanadi as heir to last holder, restore the Walikarki lands and take service from him. The Prant Officer on enquiry was relactant to take any action on the orders passed by his Office in 1931 and ordered the papers had been moved for filed and informed the parties accordingly.

The plaintiff then approached the Collector in appeal. The Collector on enquiry confirmed the orders of the Prant Officer and dismissed the appeal. Against this order of the Collector the plaintiff again went in appeal to the Bombay Revenue Tribunal. The Tribunal on 1-5-1948 rejected the application as its question was outside its jurisdiction and as the question of remuneration to Sanadi service and lands is not governed by Watan Act and so the applicant could not claim the possession of Sanadi lands on the grounds that he is fit to render service and is the direct and sole male decendant of

the former Sanadi.]

The plaintiff's contension that the order passed by the Collector of Bijapur on 26-8-1947 and the rejection of his appeal by the Revenue Tribunal on 1-5-1948 are illegal is not correct.

The suit may therefore be defended on the grounds discussed above.

Mamlatdar, Bijapur.
7/4/49

#3 41

Statement showing a brief description of documents referred to in the Suit on behalf of Govt. as required by Rule 128 (d) of Law Officer's Rules

---

File No.I

S.No.	Brief description	Page.
1.	Geneology of the family	3
2.	Extract of Inam Register.	7
3.	Order of the Mamlatdar	15
4.	Order of the Prant Officer	18
	File No.II	
5.	Application dated 22-8-1946 of Peera Mahamad to Prant Officer to restore Sanadi lands and to take service from him	1
6.	Extracts from R. of R in respect S.No.91	
7.	-do- S.No.92	15
8.	-do- " 93	17
9.	-do- " 412.	19
10.	-do- " 398	21
11.	Copies of Mutation entries Nos. 558 and 578 of Nidoni in respect of Wangasa.	33
12.	Order of the Prant Officer	41
13.	Appeal petition dated 13-3-1947 of Peeramahamad to the Collector	47
14.	Copy of the order of the Prant Officer	49
15.	Order of the Collector	65
	File No.III	
16.	Copy of the order of the Bombay Revenue Tribunal	5.

Mamlatdar Bijapur
7/4/49

Bijapur Civil Suit No. 2 of 1949.

This is a suit for a declaration that the Shet Sanadi lands in the village of Nidoni (Taluka Bijapur) described in the plaint, together with the right of service of Walikar of the village, constitute a Watan to which the plaintiff is entitled and for possession of the suit lands with mesne profits from defendant No.1, Government is defendant No. 2.

The plaintiff is the son of one Dastagirsaheb Hajisaheb who was the officiating Shet Sanadi in the village. He died on 13-4-1931 leaving behind him his widow and the plaintiff who was then a minor. There was no other male member in the family fit to serve as Walikar except the defendant No.1. The widow made an agreement with the defendant No. 1 that he should act as a deputy and relinquish the Sanadi lands as well as Service on plaintiff's attaining majority and on these terms gave the right of Walikarki service and the possession of the lands assigned for the remuneration of the Walikar to the defendant No.1. Accordingly the Sanadi lands and service were entered in the name of the defendant No.1. The record shows however that this family arrangement between plaintiff's mother and defendant No.1 was not accepted by the revenue officers and the appointment of defendant No.1 as Walikar was permanent and unconditional.

The plaintiff on attaining majority approached the Prant Officer to recognise him as entitled to hold the Office of that Sanadi as heir to the last holder, to restore the Walikarki lands and to take service from him. The Prant Officer did not take any action as orders had been passed by his Office in 1931 and directed that the papers should be

filed and the parties informed accordingly.

The plaintiff then appealed to the Collector who confirmed the orders of the Prant Officer and dismissed the appeal. The plaintiff again went in appeal to the Bombay Revenue Tribunal. On 1-5-1948 the Tribunal rejected the appeal as the question was outside its jurisdiction.

On 30th August 1948 the plaintiff gave notice of suit and thereafter be filed this suit in the Court of the Civil Judge, Senior Division, Belgaum.

The suit relates to a claim on Shet Sanadi lands; the questions of fact and law are similar to those in Belgaum Civil Suit No. 499 of 1946, and the present suit will therefore be defensible on the lines of the brief prepared in that suit. A separate brief for this suit is therefore not considered necessary. The District Government Pleader may be requested to defend the suit on the lines of that brief a copy of which may be forwarded to him for information and guidance.

Slip A in 1-10 S. Bk. 1/2/c put up

RLA

19-5-49
20

RLA Pl put up the High Court decision in the Dharwar Sanadi suit-
RLA 20/5.

Ptics

The Dharwar Judgment is at p. 285 of the file of Suit No. 63 of 1940. But the main point was not decided by the High Court. A.C.R. and Sec his note of 21-11-47 below my note of 19-11-47 on f. 224 of Vol- file-

DCR

RL
23/5-

In the present suit the claim made by the plaintiff against Govt. and the other defendants is for possession of the Sanadi lands and for a declaration that the lands and the right of service constitute the watan. It is true that the question whether Sanadi lands are watan lands is involved in the present case. But it is contended also in the plaint that, although the plaintiff was incapable of rendering any service during his minority, the lands could not be taken out of his possession and Govt. would at the most have been entitled to levy full assessment. The first question about the lands being watani lands is no doubt considered in the brief in Belgaum Civil Suit No.499 of 1946 and on the lines mentioned in that brief this point may be contested. But so far as the other question is concerned, namely, the levy of assessment without dispossessing the plaintiff, it appears that the recent decisions of the High Court in Second Appeal No.1150 of 1944 has created difficulties. In that case Bavdekar J. after reviewing the previous decision of the Bombay High Court has come to the conclusion that what is granted to a Sanadi by way of remuneration for the service rendered by him is the difference between the assessment and judi and the lands are no longer to be considered as constituting the grant so that, when the service is not taken from the Sanadi, all that Govt. would be entitled would be to levy the full assessment. This decision has further complicated the matter. It appears that Govt. should take an early opportunity to have this matter again referred to a Full Bench. An opportunity may be taken to contest this matter in the suit so that the point may ultimately be, if possible, taken to a Full Bench. The

Bombay....

Bombay Revenue Jurisdiction Act no doubt bars certain suits of this kind but, as pointed out by the Bombay High Court in Mallappa Baswantrai Desai v. Tuko Narsinha Mutalik (39 Bom. L.R. 288), the defence of bar of jurisdiction of the civil court under the Bombay Revenue Jurisdiction Act would be available to Govt. only if the order passed or the action taken by Govt. is intra vires. If the decision of the Bombay High Court in Second Appeal No.1150 of 1944 is to be taken as correct, then it can possibly be contended that the Collector had no right to evict the plaintiff from possession of the lands and if the plaintiff was unable to render service, Govt. should have only levied full assessment and consequently, the order of eviction was ultra vires. However, a brief is prepared on the lines contending that the Sanadi grants are not watan and the lands granted to a Sanadi are not grants of revenue but of soil and that these lands are given as remuneration for the service and consequently so long as the Sanadi is capable of performing service and in fact does service, he should enjoy the lands. The defence under the Bombay Revenue Jurisdiction Act is also taken up.

Defence may be sometimes on the lines of the above brief.

RK 1/6

RLA.

No.O.S. 494 of 1946.
Belgaum, 16th June 1949.

Very Urgent

Dear Mr. Mehtasahel

219

With reference to your D.O.No. 6208 dated 3rd June 1949, I am to dtate that the civil appeals Nos. 329/41 338/41 and 354/41 are the appeals in regard to which inform -ation was required of me. The said appeals were between - ptivate parties and Govt. was no party to them. A single judge -ment was declared by Mr. Lad in said appeals on 19-4-45. It is not possible to obtain a copy of the judgement in question, in the District Court, since the whole record has been despached to High Court on 9-12-1945, as they were required for the purpose of the hearing of the appeals pending at the High Court against the decrees in the said appeals, if neces-sary copy may be obtained from the High Court record- the High Court appeal No. being second appeal No. 990 of 1945.

I am further to request you that in Govt. suit No. 494 of 1946 pending in the Court of the Civil Judge, S.Dn.,Belgaum, following documents are necessary to be produced in the suit on behalf of Govt. We have not been able to trace them in our record. I have also written to the Collector in this connection, a copy of which is also forwarded to the Remembrancer of Legal Affairs, Bombay this day. The documents in question are:-

1. Letter of the Collector dated 14-5-1860 to Konherrao informing him that the grant did not include any forest and Abkari rights.
2. Collector's reply dated 4-8-1860 that Inamdar's request in application of 16-7-1860 was rejected.
3. G.R.No. 4221 dated 4-12-1867 in reply to Inamdar's petition dated 17-3-1866 deciding that forest rights were not granted to him.
4. Govt.Notification No.3401(R.D.) dated 23-5-1882 by which S.Nos. 8 and 37 along with others were declared protected forest under Section 28 of the Forest Act.
5. Inamdar's petition to the Commissioner, S.D. dated 15-9-1885

claiming forest rights in Inam villages and Govt. reply dated 11-6-1888 thereon.

6. Govt. Notification No.7515/7-8-1906 and No.692 dated 22-1-1914 daclaring S.No. 8 & 37 of Yadagud and other villages to be reserved forest.

They may kindly be traced in your record and sent to me immediately, as the hearing of the suit is fixed on 24-6-1949. The Court may not agree to adjourn the suit.

We have also been called upon to produce the following docu--ments, bythe plaintiff. They have not been traced, so far, in the record sent to me or with the Collector. They may also be - traced in your office and sent to me. I hope you will kindly - treat this as urgent. The documents called for by the plff. are:-

1. Sanad of the village Panjanatti Taluka Gokak of the Belgaum Collectorate held as an hereditary Inam under Summary Settle--ment 1863, under authority of the British Govt., in the name of Konherrao Annaji Deshpande, dated 14th December 1867.

2. Original letter from the Revenue Commissioner to the Political Agent,S.M.Country, regarding loyal and efficient service - rendered by Konherrao Annaji, dated 15th March 1850 & order ~~xxxxxx~~ of Secretary of State.

3. Original letter written by Jacob Saheb Bahadur to Konherrao Annaji alias Shahapurkar dated 31-5-1858.

4. Original letter written to Konherrao from the Secretary to Govt. dated 26-7-185[illegible].

5. Original letter from H.L.Anderson Esqr. Secretary to Govt., Bombay, to Colonel, Le Grand Jacob, Special Commissioner,Bomy.

6. Original order from the office of the Ankalgi Mahalkari to the village officers of Panchanhatti -Mulki No.160 dated 14-4-1860.

7. Original ~~xxxx~~ application from Virupax Narashivha Konher and others to the Collector of Belgaum, dated 12-8-1902.

The above 7 documents may also be traced and sent, immediate ly. Awaiting your kind Regards.

Very Sincerely yours.

To

R. M. Mehta, ~~xxxxx~~ Esqr., LL.B.,
Legal Department, Bombay.
BOMBAY.

Legal dept.

Please see at pp 47-49 a letter from the d.g.p. Belgaum in reply to this office d.o No. 6208 dt. 3/6/49. The d.g.p. states that it is not possible to obtain the copy of the judgment as the whole record of the case has been forwarded to the High court in second appeal no. 990 of 1945. It is for orders whether the copy of the judgment may be obtained from G.P.H. High if available with him. As regards the documents verified by the d.g.p., the collector of Belgaum is in a position to supply the necessary documents — if the d.g.p. has entrusted the collector in that behalf. In view of the receipt of the reply the reminder to the d.g.p. at p. 45 ante may not issue

SSH
18/6

A.S. The reference about the above matter
enclosed in Govt No. 494/1946 will
have to be treated separately. Please
put up the papers after
and the action as at A

RJ
20/6

I have obtained from the High Court the original of the judgment which the R.L.A. delivered as a District Judge at Bergaum. That was a case between private parties. The plaintiff in that suit was the auction purchaser of that Saranchi lands

Slip D

The principal conclusions which the R.L.A reached in that case are (1) that that Saranchi lands are Watan lands which cannot be alienated beyond the life time of the Watandar under s. 5 of the Watan Act & that therefore the auction sale in plaintiff's favour could be valid beyond the life of his judgment debtor (2) that as regards the action of Government under the Resumption Rules the question whether that Saranchi holding is Watan or not is immaterial because the powers under those Rules are reserved by s. 1 of the Watan Act.

R.L.A. 20/6

R C H

Have

Thanks. The Ordinance
on the lines of the draft already
prepared should be sanctioned.

23/6

Sec. (R.D.) 25.6.49

REVENUE DEPARTMENT
SECRETARIAT, BOMBAY.
25-6-49

K

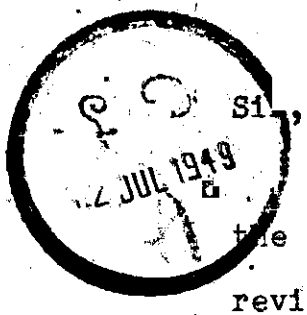
K.No. 7036
25-6-1949.

No. 487 of 1949
Date:- 7-7-49

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:-Bijapur C.S.No.2 of 1949.
2. Meermohamad wd Dastagirsaheb walikar. plff.
Vs.
1. Miyasaheb wd.Hashimsaheb
2. The Government of Bombay. defts.



Sir,

I have the honour to submit herewith a draft of the written-statement prepared as per brief for favour of revision and approval.

In this matter, the order rejecting the plaintiffs application was passed on 27-1-1947 by the Prant officer and the said order was confirmed in appeal by the Collector on 26-8-1947. The suit is filed on 18-12-1948. So the suit is barred by time under Article 14 of the Limitation act. This contention is not tak in the brief. If you approve of this contention it may be added in the Written-statement. The case is fixed for filing written

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT

1058-1
A-13-7-49

statement on 20-7-1949.

Papers in three files accompany.

Yours faithfully

K M Kulkarni

District Government Pleader, Bijapur.

Legal dept.

Please see overleaf a letter dt. 7/7 from d.g.p. Bijapur forwarding a draft W.S. in C.S. No. 2 of 1949 for orders

15/7

The W.S. is slightly amended may be allowed

A.S

R. H.C.A.R. 18/7

In the Court of the Civil Judge Senior Division, Bijapur.

Civil Suit No.2 of 1949.

1. Peermohamad wd.Dastagirsaheb Walikar — plff.

Vs.

1. Miyasaheb wd.Hashimsaheb and
2. The Government of Bombay. — defts.

The written-statement of deft No.2 is as follows:-

1. The suit is barred under section 4(a) of the Revenue Jurisdiction Act 1876.

2. The allegations in para 1 and 2 are denied. The office of the walikar of Nidoni village and the Sanadi lands are not watan and are not governed by the Act III of 1874 ~~xxxxxxxxxxx~~ The plaintiff's father and his ancestors did not enjoy the office and the said lands heriditarily.

3. The allegations in paras 3 to 6 are denied The office and the property are not heriditary.Dastgirsaheb died in 1931 leaving Plaintiff a minor and his widow, who could not perform the service. So Government had a right to appoint a new walikar and resume the service lands from the former and grant them to the latter. Under that right the Prant Officer appointed the deft No. 1 as the officiator and transferred the suit Sanadi lands to him as remuneration for the said service.The agreement set up in paras 3 and 4 of the plaint was not accepted by the Government. Hence the plaintiff has no right to the said service or the suit Sanadi lands. The revenue authorities and the Revenue tribunal was justified in rejecting the application of the plaintiff.

4. The allegations in paras 7 and 8 are not corect. The service and the lands are not watan and they are governed by resumption rules framed by the Government in that connection. The Government has every right to evict the plaintifff from the suit lands. The said lands were resumed and transferred to deft No.1 who was appointed to the said office. So the order passed in that connection by

the Revenue authorities were intra vires.

5. The Prayer that the suit lands even though not watan ~~kam~~ should be restored to the plaintiff as stated in para 8, cannot be granted for the reasons stated above.

6. The plaintiff is not entitled to any of the reliefs prayed for and so the suit be dismissed with costs.

District Government Pleader, Bijapur.

I K.R.Rao, District Government Pleader Bijapur declare that what is stated above in paras 1 to 6 is true according to the information received and believed to be true. This verification is made at on the day of 1949.

District Government Pleader, Bijapur.

Issues.

1. Whether the plaintiff's father and his ancestors enjoyed the office of walikarki in the village Nidnni as claimed in the plaintx ?

2. Whether they performed services in connection xxxx therewith?

3. Whether they were in possession and in enjoyment of the suit lands in lieu of services?

4. Whether the lands and the right of service constituted a watan as defined in the Watan Act ?

5. Whether the plaintiff is entitled to possession and declaration of his right to render service-?

6. Whether the plaintiff's mother entered into an agreement with the defendant as alleged in para 3 of the plaint ?

7. Whether such an agreement is binding on the defednant ?

8. Whether the plaintiff is entitled to possession as heir on the death of his father ?

9. Whether defendant No.1 was rendering services on behalf of defendant No.1 pursuant to the agreement entered into between the defendant and the plaintiff's mother ?

10. Whether in 1931 Government appointed defendant No.1 as Sandi?

11. If so, whether the plaintiff can question the appointment made by Government ?

12. Whether the suit is in time ?

13. Whether the suit is barred under the Revenue Jurisdiction Act and under the Watan Act ?

14. Whether any cause of action has accrued to the plaintiff ?

15. Whether the Government was entitled to resume the lands as alleged in para 5 of the written-statement Exh. 24 ?

16. Whether after such resumption and transfer, the plaintiff is entitled to institute this suit ?

17. What orders.

No further issue sought.

Sd. A.C.Sequeira..

November 16,1949. Civil Judge,Sr.Dn.

" True Copy "

Dist. Govt.Pleader,Bijapur.

Suits :

Bijapur.

For a declaration that the Shet Sanadi Lands in the village of Nidoni described in the plaint together with the right of service of Walikar of village constitute a watan to which the plaintiff is entitled and for possession of the suit lands with mesne profits from defendant No. 1.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8947.

Bombay Castle, 9th August 1949.

Letter from the Collector of Bijapur, No. L.A.W. 187, dated the 13th April 1949—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 2 of 1949.

Peermahomed wd. Dastagir sab. ... Plaintiff;

versus

(1) Miyasaheb wd. Hasimsaheb Walikar.
(2) The Province of Bombay ... } Defendants.

Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 7341, dated the 2nd July 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original.

G. R., No. 8947, L. D., dated the 9th August 1949.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the Brief).

*With a copy of the Brief.

No. of 1949.

Copy forwarded for information and guidance to

Sahtd. after issue
Filed in S. Bijapur 5-0 (Revd)
7-2
S.A. 2/12

Issued 6/12/50

142
23

Grounds of Defence.

Bar of jurisdiction of the Civil Court.—Under clause (*a*) of section 4 of the Bombay Revenue Jurisdiction Act, no Civil Court shall exercise jurisdiction to any claims against the Crown relating to any property appertaining to the office of any hereditary officer, etc., or any other law for the time being in force, or of any other village officer or servant, or claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or suits to set aside or avoid any order under the same Act, or any other law relating to the same subject for the time being in force passed by the Provincial Government or any officer duly authorised in that behalf, or claims against the Crown relating to lands held under treaty, etc., or to any officer duly authorised in that behalf to be held for service. This provision was considered by the High Court in Mallappa *v.* Tukko (39 Bom. L. R. 288), and the High Court held: "A distinction is made between claims and suits in section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876. Clauses (1) and (4) speak of claims against Government, clause (2) speaks of claims to perform duties, and clause (3) speaks of suits to set aside or avoid orders. Under clauses (2) and (3) Government need not necessarily be a party. Clauses (1) and (4) will as a rule only apply where Government is a party; but the mere fact that Government is a party will not be enough to bring the case under those clauses. The words "claims against Government relating to property or lands" may imply that relief of some kind is sought against Government. Government must be more than a purely formal party. If Government is to be bound by the decree to make any payment or to restore any property, or if an injunction is sought against Government, that is a claim against Government. A suit to obtain an order for delivery of possession of property, which is merely to bind a private party and is not to be enforced against Government, though it may offend against section 4 (*a*) (*3*), does not fall within clause (1). A suit, whether between private parties or against Government which would have the effect of nullifying an order made by the Collector, is barred by section 4 (*a*) (*3*) of the Bombay Revenue Jurisdiction Act, assuming that the order is validly made and is not *ultra vires* under the Bombay Hereditary Offices Act, 1874. In the present case the suit is filed not only against the Sanadi who was appointed when the old Sanadi died but also against Government. The claim made is not only for a declaration that the land and office constitute the watan but also for possession of the Sanadi lands. It is, therefore, clear that it is a suit substantially against Government for possession of the land because, on the death of the old Sanadi, the Collector resumed the lands and handed them over to the second defendant on his appointment as Sanadi. Consequently, before the plaintiff can be awarded possession, it would be necessary not only to set aside the order of resumption, but also to appoint the plaintiff to the office of Sanadi. The suit would, therefore, be barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act.

2. The next question for consideration would be whether the lands and the Sanadi office constitute the watan. This question was fully considered in the brief prepared in Legal Department, in Belgaum Civil Suit No. 499 of 1946. The points urged in that brief should be made the basis of the contention of Government that the Sanadi service and the lands granted for such service do not constitute the watan. The question whether these lands and the service constitute the watan was

specifically raised in Dharwar Civil Suit No. 63 of 1940 and the lower Court held in favour of Government that they do not constitute the watan. However, in Second Appeal No. 1150 of 1944, filed against the decision in that civil suit, the High Court avoided this issue and decided the matter on a point which unfortunately the other side admitted in the lower Court but the High Court did not hold that party to admission and came to the conclusion that any admission by the pleader on behalf of that party would not be binding. It is, therefore, clear that this question as to whether the Sanadi service and the lands constitute a watan governed by the Bombay Hereditary Offices Act, is still open. It should, therefore, be urged for the reasons stated in the brief in the aforesaid Belgaum Civil Suit that the Sanadi lands and the service do not constitute the watan.

3. The next question for consideration is whether the plaintiff can ask for possession of the suit lands on the ground that, if service was not taken from his deputy during his minority or any one else on his behalf, Government would at the most be entitled to levy full assessment. In support of this contention it is likely that the plaintiff would rely on the decision of the Bombay High Court, in Second Appeal No. 1150 of 1944. In that appeal the High Court came to the conclusion that what is granted for Sanadi service as remuneration is the difference between the assessment and the judi and if service was not required by Government, Government might at the most be entitled to levy the full assessment. It is apparent from the judgment that Government was not given any opportunity to meet this point at any stage during the trial. On the contrary, it was plainly admitted by the pleader on behalf of the Sanadi that the grant was not of revenue but of soil, that is to say, on the discontinuation of service, the lands can be resumed by eviction. It should, therefore, be pressed in this suit that the lands assigned for service to a Sanadi as remuneration are grants of soil in the sense that the lands belong to Government and it is only for the purpose of remuneration that these lands are allowed to be enjoyed by the Sanadi so long as he does the service and on the discontinuation of his service, Government would be entitled to resume by eviction. Judi is levied on such lands to reduce the remuneration and is not an indication, that what was granted was the difference between the assessment and judi.

4. The relevant provisions which govern the Sanadi lands and the Sanadi service are contained in the rules framed by Government regarding the resumption and continuation of service lands and these rules are published in Government Notification No. 10336, October 12, 1908. These rules would be applicable to the Sanadi service lands irrespective of the question whether they are or are not governed by the Watan Act (see section 1 of the Bombay Hereditary Offices Act). Under Rule 4, service lands can be resumed if service is no longer performed. Since the plaintiff's father died, there was no one in the family who was competent to do such duties attached to the Sanadi office because the plaintiff was then a minor and his mother could not discharge the duties. Consequently, Rule 4 was availed of and the Sanadi service lands were resumed by eviction under Rule 6. It should, therefore, be contended that the Sanadi service and the Sanadi lands do not constitute the watan and the Bombay Hereditary Offices Act, is not applicable to them and that the resumption rules only will apply. In exercise of the power vested under these rules, the lands were resumed and granted to second defendant for the service. The order of resumption was thereby *intra vires*.

5324

2 Whether they performed services in connection therewith ?

3. Whether they were in possession and in enjoyment of the suit lands in lieu of services ?

4. Whether the lands and the right of service constituted a watan as defined in the Watan Act ?

5. Whether the plaintiff is entitled to possession declaration of his right to render service ?

6. Whether the plaintiff's mother entered into an agreement with the defendant as alleged in para 3 of the plaint ?

7. Whether such an agreement is binding on the defendant ?

8. Whether the plaintiff is entitled to possession as heir on the death of his father ?

9. Whether defendant No.1 was rendering services on behalf of defendant No.1 pursuant to the agreement entered into between the defendant and the plaintiff's mother ?

10. Whether in 1931 Government appointed defendant No.1 as Sanadi ?

11. If so, whether the plaintiff can question the appointment made by Government ?

12. Whether the suit is in time ?

13. Whether the suit is barred under the Revenue Jurisdiction Act and under the Watan Act ?

14 Whether any cause of action has accrued to the plaintiff ?

15. Whether the Government was entitled to resume the lands as alleged in para 5 of the written-statement Exh. 24 ?

16. Whether after such resumption and transfer, the plaintiff is entitled to institute this suit ?

17. What orders.

(5). My findings are :-

1. Yes. 2. Yes. 3. Yes.

4. Lands constituted a Watan. The question of succession is not governed by the Watan Act.

5. No. Under Government Notification No.10836, October 12, 1908.

6. Yes. 7. Not binding on the State of Bombay.

8. No. 9. Deft.2 was rendering service pursuant to his appointed by Government.

10. Yes. 11. No. 12. Unnecessary.

13. Yes. 14. No. 15. Yes.

16. No. 17. General issue.

Reasons

6. Suit lands bearing survey Nos. 91,92,93,398 and 412 were assigned for Sanadi service in the village of Nidoni. The former holder and Sanadi was the plaintiff's father Dastgirsaheb who died on 3-4-1931 leaving a widow and the plaintiff who was then a minor. Being a minor he could not officiate as Sanadi with the result that defendant No.1, who was his kinsman, undertook to officiate as Sanadi and deliver back the property after the plaintiff attained majority. The Prant Officer in July 1931 appointed defendant No.1 to officiate as Sanadi. The possessionx of the Sanadi lands was thereupon transferred to defendant No.1 to serve as remuneration for Sanadi service.

7. After he attained majority, the plaintiff sought possession of the lands and offered his services as a Sanadi on the ground that the appointment of defendant No.1 was tempo-rary and was to cease upon the plaintiff attainingg majority. The Prant Officer and the Collector having regard to the approved service of defendant No.1 for 16 years refused the plaintiff's request. He then appealed to the Bombay Revenue Tribunal. His application was rejected for the following reasons:-

It is apparent from the record that the appointment of the opponent was not conditional. The question of succession to Sanadi land and Sanadi service is not governed by the Watan Act. Consequently, the applicant cannot claim possession of the Sanadi lands on the ground that he is fit to render service and is the direct and sole male descendant of the former officiating Sandi"

8. As to the question whether Shet Sanadi lands are watan or not, I am bound by the decision in Limbaji's case (1898 P.J.127). The real question is not whether the decision in Limbaji's case or the Government Resolution should be followed, but whether the Collector could or could not in his discretion direct the resumption of such lands if it appeared to him that the lands had come into possession of a minor, who, on account of his minority, could not possibly officiate as Sanadi.

57
25 3

In the Court of the Civil Judge, Senior Division,

At Bijapur.

Special Civil Suit No. 2 of 1949.

Shri S.A.Tanksali.

1. Pirmohammad wed Dastgirsaheb ... Plff.

Vs.

Shri R.S.Ambekar.
Shri K.R.Rao
(District Govt. Pleader, Bijapur for deft No.2).

1. Miyasaheb wd. Hasimsaheb Walikar
2. The Province of Bombay. ... Defts.

Judgment.

Suit for possession after declaring the plaintiff's titile to the property together with a claim for future mesne profits. The plaint is based on the following allegations:-

(a) " The Plaintiff's deceased father Dastgirsaheb and his ancestors held hereditarily the office of a walikar in the village of Nidoni in Bijapur taluka and performed the services and duties appertaining to such a walikar and enjoyed as such the lands.

(b) " The plaintiff's father died on 13-4-1931 leaving behind him a widow, the plaintiff-his son, then minor aged 3-4 years, and three daughters. As there was no male member fit to serve as a walikar the plaintiff's mother entered into an agreement with defendant No.1 in pursuance of which he (defendant 1) agreed to perform the services as plaintiff's deputy, maintain the plaintiff and his mother and enjoy the lands till the plaintiff came of age. He further agreed to relinquish the lands and right of service as soon as plaintiff came of age This arrangement was embodied in statements made before the Revenue Officers by plaintiff's mother and defendant No.1 and the lands which had been entered in the plaintiff's name were then transferred to the name of defendant No.1.

(c) " After the above agrangement the defendant No.1 began to serve as a walikar and enjoy the lands. For about 2 years the defendant maintained the plaintiff and his mother and then ceased to do so.

(d) " On plaintiff's attaining he asked defendant No.1 to give up the lands and right of service but he began to give evasive

replies. He then applied to the Revenue authorities for restoration of lands and service, but the revenue tribunal finally refused to grant the plaintiff's prayer on the ground that the lands and right of service did not constitute a watan and that plaintiff has no right to hold the same or perform the services. Hence this suit".

2. Defendant No.1 in his written-statement contendes as follows:-

(a) " It is denied that the plaintiff's father and his ancestors held the Sanadi office heriditarily.

(b) " The suit lands are assigned for the remuneration of the officiator who alone is entitled to enjoy the full profits thereof. The defendant does not admit that they are "Watan" lands or that the right to officiate is governed by the Watan Act.

(c) " In 1941, Government appointed this defendant as Sanadi unconditionally, as it has every right to so appoint. Under the Government orders then in force no such conditional appoint-ment could be made. The contents of para 3 of the plaint to the contrary, are denied

(d) " Government has every right to appoint any person it likes to the office of a Sanadi and give the sanadi-lands to him as remuneration for his services.

(e) " The suit is barred by time

(f) " The suit is barred under section 4(a) of the Revenue Jurisdiction Act, and under sections 13-64 and 67 of the Watan Act, 1974.

(g) " The right to officiate as Sanadi and the right to enjoy the suit lands are inseparable. Plaintiff, therefore, cannot sue merely for possession of the lands".

3. The Government of Bombay in their written statemant Exh. 24 have taken similar points.

4. The following issues were framed in the case:-

1. Whether the plaintiff's father and his ancestors held the office of walikarki in the villa e Nidoni as claimed in the plaint ?

" The question in this application, therefore, relates to the appointment of a Sanadi. This Tribunal has consistently held(see order No. 0-135 of 1944) Case No.1500, Appellant Yamanappa Hanamappa Natikar, Selected Decisions,1944, P.37) that such a question is outside its jurisdiction. This application, therefore,fails.

55 29 7

9. Now the powers of the Collector or rather of Government to deal with the Watan under the rules made under Act XI of 1852 or Bombay Acts Nos. II and VII of 1863.(the last two Acts are now repealed) are expressly reserved under section 1 of the Heriditory Offices Act. The could be no doubt, therefore, as to the power of the Collector to transfer to defendant No.1 the possession of the Sanadi lands to serve as remuneration for Sanadi service.It is true that the plaintiff's guardian mother and defendantNo.1 had come to an arrangement by which defendant No.1 undertook to restore back the lands after the plaintiff attained majority. It is however noticeable that Government was not party to such an arrangement. As observed by the Revenue Tribunal, the question of succession to Sanadi lands and Sanadi service is not governed by the Watan Act.Consequently the plaintiff cannot claim possession of the Sanadi lands

on the ground that he is fit to render service and is the direct and sole male descendant of the former officiating Sanadi.

10. The suit fails upon the technical objection taken by the Government and by defendant No.1. So far as defendant No.1 is concerned. I must say that the path of honour lay in delivering back the lands to the plaintiff pursuant to the agreement arrived at between the plaintiff's mother and defendant No.1. The plaintiff is at liberty to move Government to reconsider their decision having regard to the course of events whereby defendant No.1 had agreed in express terms to restore back the lands after the plaintiff attained majority.

11. In the result, the suit fails and is dismissed. Plaintiff to pay the costs of Government (defendant No.2).

19-4-1950. Sd. A.C.Sequeira.
Civil Judge,Sr.Dn.

True Copy "

Dist.Govt.Pleader,Bijapur.

65 A 31

DECREE. Ex. 50.

In the Court of the Civil Judge, Sr.Dn.,

At Bijapur.

Sp. Civil Suit No. 2 of 1949.

1. Pirmohammad Wd. Dastgirsaheb Walikar,
of Bijapur. .... Plaintiff.

against.

1. Miyasaheb Wd. Hasimsaheb Walikar,
of Bijapur.
2. The Province of Bombay. Defendants.

Claim Rs. 875/-

The plaintiff sues to

Suit for possession after declaring the plaintiff's title to the property together with a claim for future mesne profits. The plaint is based on the following allegations:-

(a) " The plaintiff's deceased father Dastgirsaheb and his ancestors held hereditarily the office of a walikar in the village of Nidoni in Bijapur talukas and performed the services and duties appertaining to such a walikar and enjoyed as such the lands.

(b) " The plaintiff's father died on 12-4-1931 leaving behind him a widow, the plaintiff-his son, then minor aged 3-4 years, and three daughters. As there was no male member fit to serve as a walikar the plaintiff's mother entered into an agreement with defendant No.1 in pursuance of which he (defendant 1) agreed to perform the services as plaintiff's deputy, maintain the plaintiff and his mother and enjoy the

the lands till the plaintiff came of age. He further agreed to relinquish the lands and right of service as soon as plaintiff came of age. This arrangement was embodied in statements made before the Revenue Officers by plaintiff's mother and defendant No.1 and the lands which had been entered in the plaintiff's name were then transferred to the name of defendant No.1.

(c) " After the above arrangement the defendant No.1 began to serve as a walikar and enjoy the lands. For about 2 years the defendant maintained the plaintiff and his mother and then ceased to do so.

(d) " On plaintiff's attaining he asked defendant No.1 to give up the lands and right of service but he began to give evasive replies. He then applied to the Revenue authorities for restoration of lands and service, but the Revenue tribunal finally refused to grant the plaintiff's prayer on the ground that the lands and right of service did not constitute a watan and that plaintiff has no right to hold the same or perform the services. Hence this suit."

As the suit is for possession and declaration it is valued as under,

1.	For possession on seven and half times the total assessment viz.,	Rs. 247-8-0
	plus fifteen times the profits viz., 28-8-0	" 427-8-0
2.	For declaration of plaintiff's right to the watan	" 200-0-0
	Total	" 875-0-0

Court fees on Rs. 875/- has been paid for Court's jurisdiction and pleader's fees the suit property is valued at Rs. 6000/-

As the property is situate within the jurisdiction of this Court it has jurisdiction to try this suit.

The plaintiff prays:-

1. That possession of the land described in para 1 of the plaint be awarded to the plaintiff.
2. That it be declared that the lands described above together with the right of service as walikar of Nidoni

35-64

Suits:
Bijapur

For a declaration that the Shet Sanadi Lands in the village of Nidoni described in the plaint together with the right of service of Walikar of village constitute a watan to which the plaintiff is entitled and for possession of the suit lands with mesne profits from defendant No.1

GOVERNMENT OF BOMBAY
Legal Department
Resolution No. 7112
Bombay Castle, 25th May 1950.

Endorsement from the District Government Pleader, Bijapur No. 245, dated the 21st April 1950 forwarding a copy of the Judgment and stating that the suit noted in the margin was decided by the Civil Judge, Southern Division, Bijapur, on 19th April 1950, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No. 2 of 1949.
Peermahomed wd. Dastagir sab. .. Plaintiff:
versus
(1) Miyasaheb wd. Hasimsaheb Walikar ..Defendants.
(2) The Province of Bombay.

" The suit fails and is dismissed. Plaintiff to pay the costs of Government (Defendant No. 2)."

Resolution :- The result of the suit is recorded.

By order of the Governor of Bombay,

original.
R. M. Mehta
R.M. Mehta,
Assistant Secretary to Government.

submitted for orders.
22/5

To
The Revenue Department,
The Collector of Bijapur.

A.S. 22/5/50

mSP/18/5

Typed 25/5

constitute watan and that the plaintiff is entitled to hold the same as heir.

c. That mesne profits of the lands from date of suit to ~~date~~ date of possession be awarded.

d. that costs of suit be ordered to be paid by the defendant.

The suit coming on 19-4-1950 before Shri A.C.Sequeira Esqr. Civil Judge, Sr.Dn., Bijapur , Shri S.A.Tanksali pleader for the plaintiff and Shri R.S.Ambekar for the defendant and Shri K.R.Rao appears for the defendant 2 (Province of Bombay) and it is hereby decreed as follows:-

In the result, the suit fails and it is dismissed. The plaintiff is to pay the costs of Government (defendant No.2).

Bill of Costs.

Plaintiff.	Rs.A.P.	Defendant No.1.	Rs.A.P.
1. Plaint	84-8-0	1.Vakalat	0-10-0
2. Vakalat	0-10-0	2.Process	2-8-0
3. Process	10-0-0	3.Pleader's fees	210-0-0
4. Pleader's fees	210-0-0	4.Applications Ex. 13,15,18,27	2-8-0
5. Copying & translation fees.	12-6-0		
6. Applications Ex. 26, 20,	1-4-0		
	318-12-0		215-10-0
Not certified.	1-4-0	Not certified.	2-8-0
	317-8-0		213-2-0

Defendant No. 2.

	Rs.A.P.
1. Application. Ex. 14,16, 17,19,22.	3-2-0
2. Pleader's fees.	210-0-0
Ex	213-2-0
Not certified.	3-2-0
	210-0-0

It is given under my hand and seal of the Court.

Sd. R.L.Kulkarni,
Clerk.

Sd. A.C.Soqueira,
Civil Judge, Sr.Dn.
Bijapur.

Seal of the Court.

21-4-1950.

Typed by,

C.Clerk.

" True-copy "

Compared by,

C.Clerk.

Distrct Court Bijapur.

Words. 300

Type.	1-14-0
Comp.	0- 8-0
Paper	0- 1-0
T.F.	0- 5-0
S.C.	1- 4-0
Total	4-0-0